87-164

No.

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

BROTHERHOOD OF TEAMSTERS
and AUTO TRUCK DRIVERS
LOCAL 70 OF ALAMEDA COUNTY;
DANIEL J. LYDON; and
JON A. UNDEEN,
Petitioners,

VS.

WESTERN PACIFIC RAILROAD
COMPANY; WESTERN PACIFIC
TRANSPORT COMPANY; and
UNION PACIFIC CORPORATION,
Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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16 pp

QUESTION PRESENTED

1. Did the United States Court of Appeals for the Ninth Circuit correctly conclude that plaintiffs who allege a right to "guaranteed" employment by a railroad to load and unload railroad cars must proceed to arbitration under the Railway Labor Act when their alleged right to employment depends upon the interpretation or construction of agreements arrived at in the collective bargaining process?

PARTIES TO THE PROCEEDINGS

The only parties to this proceeding are petitioners, the Brotherhood of Teamsters and Auto Truck Drivers Local 70 of Alameda County, Daniel J. Lydon, and Jon A. Undeen, and respondents, the Western Pacific Railroad Company, Western Pacific Transport Company and Union Pacific Railroad Company (sued herein as the Union Pacific Corporation).

The corporate respondents know of the following additional entities within the meaning of Supreme Court Rule 28.1 that should be disclosed to enable the Honorable Justices of this Court to evaluate the possibility of recusal:

Missouri Pacific Railroad Company
Union Pacific Corporation
Pacific Rail System, Inc.
Missouri Pacific Corporation
UP Sub, Inc.
Pacific Subsidiary, Inc.
Champlin Alaska Pipeline, Inc.
Champlin Gas Gathering, Inc.
Champlin Marketing, Inc.
Champlin Refining, Inc.
American Refrigerator Transit Company
Chicago Heights Terminal Transfer Railroad Company
Doniphan, Kensett & Searcy Railroad
Missouri Improvement Company
MP Redevelopment Corporation
Park Spring, Inc.
Stonegate Park, Inc.
Jefferson Southwestern Railroad Company
Southern Illinois and Missouri Bridge Company
The Alton & Southern Railway Company
MP Equipment Corporation
Missouri Pacific Truck Lines, Inc.
Brownsville & Matamoros Bridge Company
Missouri Pacific Air Freight, Inc.
Missouri Pacific Intermodal Transport, Inc.
Texas & Missouri Pacific Railroad Company
The Weatherford Mineral Wells and Northwestern Railway Company
Galveston, Houston and Henderson Railway Company

Houston Belt & Terminal Railway Company
Terminal Railroad Association of St. Louis
Trailer Train Company
Arkansas & Memphis Railway Bridge and Terminal Company
Kansas City Terminal Railway Company
The Belt Railway of Chicago
Penn Central Corporation
The Pueblo Union Depot and Railroad Company
Chicago & Western Indiana Railroad Company
Texas City Terminal Railway Company
Terminal Industrial Land Company
Great Southwest Railroad, Inc.
Wasatch Insurance Limited
UP Leasing Corporation
Union Pacific Finance N.V.
Union Pacific Foundation
Champlin Petroleum Company
Champlin Pipe Line Company
Champlin Gas Processing Company
Champlin Liquid Pipeline, Inc.
MKT Exploration Company
Champlin International Petroleum Company
Wamsutter Pipeline, Inc.
Champlin Petrochemicals, Inc.
CMT Ltd.
Champlin Pipeline, Inc.
Nueces Pipeline, Inc.
Harbor Service Stations, Inc.
Union Pacific Resources Corporation
Upland Industries Corporation
Unita Development Company
Union Pacific Land Resources Corporation
Upland Industrial Development Company
Quality Aggregate Company
Rocky Mountain Energy Company
Bitter Creek Coal Company
Elk Mountain Coal Company
Hanna Basin Coal Company
Kanda Development Company
Prospect Point Coal Company
Rock Springs Royalty Company

Champlin Trading Company
Champlin Midcontinent Crude Oil Pipeline, Inc.
Champlin Midcontinent Marketing, Inc.
Champlin Midcontinent Products Pipeline
Champlin Arguello Pipeline, Inc.
Panola Pipe Line, Inc.
Esperanza Pipeline Company
Champlin Canada, Ltd.
Union Pacific Resources, Ltd.
Overthrust Pipe Line, Inc.
Champlin Gas Pipeline, Inc.
R M Leasing Company
Winton Coal Company
Stauffer Chemical Company of Wyoming
Oregon Short Line Railroad Company
Camas Prairie Railroad Company
Los Angeles & Salt Lake Railroad Company
Des Chutes Railroad Company
Yakima Valley Transportation Company
Oregon-Washington Railroad & Navigation Company
Mount Hood Railway Company
Union Pacific Fruit Express Company
Union Pacific Motor Freight Company
Union Pacific Freight Services Company
Spokane International Railroad Company
The St. Joseph & Grand Island Railway Company
St. Joseph Terminal Railroad Company
The Ogden Union Railway & Depot Company
Portland Traction Company
Oakland Terminal Railway
Alameda Belt Line
Tidewater Southern Railway Company
Standard Realty and Development Company
WPX Freight System, Inc.
Delta Finance Company, Ltd.
Sacramento Northern Railway
Denver Union Terminal Railway
Portland Terminal Railroad Company
Longview Switching Company
Central California Traction Company

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Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JURISDICTIONAL BASIS

Petitioners assert jurisdiction under 28 U.S.C. Section 1254(1), but no conflict in the federal law or significant federal question is presented as required by Supreme Court Rule 17.1. On the contrary, the controlling law under the Railway Labor Act is well-settled, uniform, and that body of law is in no way "undermined" by the Ninth Circuit's adherence to well-established precedent.

STATUTORY PROVISIONS

In addition to the statutes cited by petitioners, respondents note the following relevant statutory provisions:

1. 29 U.S.C. Section 142(3):

> The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in subchapter II of this chapter as amended by this chapter.

2. 29 U.S.C. Section 152(2):

> The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, . . . or any person subject to the Railway Labor Act [45 U.S.C.A. § 151 *et seq.*], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

3. 45 U.S.C. Section 151:

> First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to subtitle IV of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling or property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier' . . . .

STATEMENT OF THE CASE

The pertinent facts are set forth in the opinion of the Ninth Circuit at pages 1a-7a of the appendix to the petition.

REASONS FOR DENYING THE WRIT

This petition should be denied. It presents no bona fide conflict in the decisions of the appellate courts or any significant question of federal law. More importantly, it is without merit. Petitioners have painted a highly distorted view of both the factual background of these proceedings and the respective contentions of the parties. On the other hand, a fair treatment of the record here shows that this case was resolved under unambiguous and uniform federal law that was applied—not because of some "error" in the Court of Appeals' reasoning process as petitioners erroneously claim—but because it was compelled by the very nature of the relief petitioners sought and the highly unique facts surrounding the collective bargaining agreements involved. The parochial dispute involved here presents no question of national significance and no threat to the well-settled federal law under either the Labor Management Relations Act or the Railway Labor Act.

A. The Court Of Appeals' Finding That This Dispute Must Be Arbitrated Under The Railway Labor Act Is Compelled By The Undisputed Record

While petitioners profess shock and surprise at the Court of Appeals' holding that this dispute was arbitrable under the Railway Labor Act, given: (1) petitioners' own express concessions in their pleadings; and (2) the unique history of their employment, the Ninth Circuit's reasoning can hardly be characterized as controversial in this case.[1] Since petitioners claim an alleged right to "guaranteed" employment by "the railroad"[2] to

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[1] That probably accounts for the fact that the seventeen other plaintiffs who are involved in this litigation have, as petitioners concede, initiated arbitration proceedings in accordance with the holding of the Ninth Circuit. Petition at 2-3, n. 1.

[2] Petitioners' express concession to this effect in their pleadings and at oral argument below is conspicuously absent from their petition. Yet, those concessions formed a significant part of the Ninth Circuit's jurisdictional analysis [appendix to petition at 5a & n.1], and that factual omission at this late date should therefore not be relied upon to undermine the reasoning process employed by the Ninth Circuit on the record actually before it. Petitioners claim that respondents "conceded"

load and unload railroad cars, the dispute they have framed can clearly be found to fall within the Railway Labor Act. *Compare*, 29 U.S.C. §§ 142(3) and 152(2), *with*, 45 U.S.C. § 151, First and *Brotherhood Of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 376-377, 22 L.Ed.2d 344 (1969). Moreover, since the alleged right of employment petitioners would create depends upon the construction or interpretation of a series of collective bargaining agreements, the Ninth Circuit followed an unbroken line of federal authority in holding that this dispute must be submitteed to arbitration before the Railroad Adjustment or Mediation Board. *E.g., Masy v. New Jersey Transit Rail Operations, Inc.*, 790 F.2d 322, 326 (3d Cir.), *cert. denied*, ____ U.S. ____, 93 L.Ed.2d 293 (1986); *Crusos v. United Transp. Union Local 1201*, 786 F.2d 970, 971-972 (9th Cir.), *cert. denied*, ____ U.S. ____, 93 L.Ed. 361 (1986); *International Ass'n Of Machinists v. Aloha Airlines*, 776 F.2d 812, 815 (9th Cir. 1985); *Fechtelkotter v. Airline Pilots Ass'n*, 693 F.2d 899, 902-903 (9th Cir. 1982); *Broth. Of Ry. Carmen, Etc. v. Pac. Fruit Exp. Co.*, 651 F.2d 651, 652-653 (9th Cir. 1981); *O'Donnel v. Wien Air Alaska, Inc.*, 551 F.2d 1141, 1146-1147 (9th Cir. 1987); *United Transp. U. Gen. Of Adg. Prop. Of P. C. Co. v. Baker*, 499 F.2d 727, 730-734 (7th Cir.), *cert. denied*, 419 U.S. 839 (1974); *Local 1477 United Transportation Union v. Baker*, 482 F.2d 228, 230-231 (6th Cir. 1973); *Railway Labor Executives Ass'n v. Atchison, T. & S.F. Ry. Co.*, 430 F.2d 994, 996-997 (9th Cir. 1970), *cert. denied*, 400 U.S. 1021 (1974); *Switchmen's Union Of North America v. Southern Pacific Co.*, 398 F.2d 443, 447 (9th Cir. 1968); *Corbin v. Pan Am. World Airways, Inc.*, 432 F.Supp. 939,

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the jurisdiction of the district court is equally misleading. When it became apparent that petitioners sought a right to employment with the railroad, respondents promptly raised the jurisdictional question in the district court. They did so again in the Ninth Circuit. In any event, given the record in this action and the nature of the dispute, the Ninth Circuit would have been free to reach the question of its own jurisdiction on its own. Whether respondents conceded jurisdiction (and they did not) is accordingly beside the point. *See, Intern. Ass'n Of Mach. & Aer. W. v. Republic Air*, 761 F.2d 1386, 1389-1390 (9th Cir. 1985); *Rader v. United Transp. Union*, 718 F.2d 1012, 1013-1014 (11th Cir. 1983).

942 (N.D. Cal. 1977); *Dones v. Eastern Airlines, Inc.*, 408 F.Supp. 1044, 1045-1046 (D.P.R. 1975).[3]

Thus, the opnion of the Ninth Circuit simply joins a uniform body of federal case law and adds to an already well-defined set of controlling principles. There is accordingly no need for this Court to invest its scarce resources to examine or reexamine anything that occurred here and the petition should be summarily denied on this ground alone.

B. Plaintiffs Have No Enforceable Rights Against Any Respondent Under The 1979 Transfer Agreement

While the Ninth Circuit did not expressly reach the issue, the district court concluded that petitioners had no enforceable "guarantee" of lifetime employment with the railroad or its subsidiary. That conclusion is also compelled on the facts of this case irrespective of any jurisdictional question.[4] As the Court of

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[3] *Airline Pilots' Assn. v. United Airlines, Inc.*, 802 F.2d 886 (7th Cir. 1986), *cert. denied*, ___ U.S. ___, 94 L.Ed.2d 791 (1987) and *Nelson v. Piedmont Aviation, Inc.*, 750 F.2d 1234 (4th Cir. 1984), *cert. denied.*, 471 U.S. 1116 (1985), cited by petitioners, do not create a "conflict" with the unbroken line of authority relied upon in this case. Both these cases hold only that prospective "applicants" for employment do not fall within the ambit of the Railway Labor Act. Petitioners do not claim to be applicants for employment. On the contrary, they seek to enforce an alleged right to "guaranteed" employment with "vested" seniority rights allegedly based upon the terms of an expired collective bargaining agreement. Petitioners' own allegations, therefore, bring them squarely within the well-established line of authority followed by the Ninth Circuit. To the extent that petitioners claim, moreover, that the Ninth Circuit's opinion in *Pan American World Airways v. United Bro. Of Carpenters*, 324 F.2d 217, 220-221 (9th Cir. 1963), *cert. denied*, 376 U.S. (1964), "conflicts" with either this case or the line of authority it follows, that purported conflict should, of course, be resolved by the Circuit Court and not this one. A review of the facts analyzed in *Pan American* and the facts relied upon here reveals, however, that petitioners' claims of "conflict" are, as with the applicant cases noted above, pure sophistry.

[4] While the petition claims that the Ninth Circuit disagreed with this holding of the district court, that contention is belied by the express

Appeals opinion shows, the Transfer Agreement was the exclusive creature of contracts developed in the collective bargaining process between Local 70 and various subcontractors. The successor rights clause never existed in any contract developed outside of that process. Yet the record also shows that that same Transfer Agreement was part of a collective bargaining agreement that was expressly superseded and revoked. No respondent made *any* agreement with petitioners independent of the Transfer Agreement and it is no longer in existence. The successor rights clause was—irrespective of its claimed significance now—simply one provision of a prior collective bargaining contract that ceased to have any independent force when it was not carried forward into the new agreement. *See, Lumber Prod. Indus. v. W. Coast Indus. Rel.*, 775 F.2d 1042, 1047 (9th Cir. 1985); *Dist. 29, United Mine Workers v. Royal Co.*, 768 F.2d 588, 592 (4th Cir. 1985); *George Foreman Associates, Ltd. v. Foreman*, 389 F.Supp. 1308, 1315-1316 (N.D. Cal. 1974), *aff'd*, 517 F.2d 354 (9th Cir. 1975); *cf.*, *Alexander v. Angel*, 37 Cal.2d 856, 863 (1951); *People ex rel. Dept. Pub. Wks. v. Metcalf*, 79 Cal.App.3d 1, 8 (1978).

There is therefore no currently existing contract that can even be creatively construed to provide petitioners with the successor rights they now belatedly seek to enforce. As the district court correctly found, whatever successor rights were held by plaintiffs were left at the bargaining table in 1982 and are not enforceable against any of the respondents now. Since petitioners claims lack any conceivable merit, their petition should be dismissed on this ground as well.

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language of the Court's opinion. As Justice Stephens noted in speaking for a unanimous court, "The district judge's view of the merits is understandable." Appendix to Petition at 7a.

CONCLUSION

As the Court of Appeals held, on the unique record presented here petitioners seek relief that the federal courts cannot and should not provide. Petitioners, like their seventeen fellow plaintiffs, should be left to pursue their alleged remedy in arbitration, and the Petition for Writ of Certiorari should be dismissed.

DATED: August 21, 1987.

Respectfully submitted,

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